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Tyco Healthcare Retail Group, Inc.
601 Allendale Road
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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/668,599
Filing Date: September 24, 2003
Appellant(s): DRISKELL ET AL.

MAILED
OCT 02 2007
Group 3700

Michael Panian
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 16, 2007 appealing from the Office action mailed November 15, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 28 – 30 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,022,211

TIMMONS

5-1977

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 28 – 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Timmons et al. (US 4,022,211).

With reference to claim 28, Timmons et al. (hereinafter "Timmons") discloses a method of making an absorbent article comprising providing a topsheet, providing a backsheet, and providing an absorbent core and positioning the absorbent core at least partially between the topsheet and the backsheet (col. 2, line 60 to col. 3, line 2); positioning at least one wetness indicator graphic at least partially between the backsheet and the absorbent core (col. 3, lines 41 – 46) and positioned at least one

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unregistered character graphic in a waist portion (col. 3, lines 41 – 56 and in figures 2, 5 and 6) of the article by a process comprising: providing a web having printed therein a repeating series of character graphics (figures 2 and 5 – 6), cutting the web at predetermined intervals (i.e. in the shape of a diaper as shown in the figures); and positioning the web in the waist portion of the absorbent article wherein the wetness indicator graphic and unregistered character graphic are related to one another, but not interactively interrelated as set forth in col. 3, lines 46 – 56 and in the figures.

Regarding claim 29, Timmons discloses a method wherein cutting the web at predetermined intervals comprises cutting the web at a length greater than the length of at least one set of character graphics in the repeating series as set forth in the figures.

As to claim 30, Timmons discloses a method wherein cutting the web at predetermined intervals results in at least one full character graphic positioned in the waist portion as set forth in the figures.

(10) Response to Argument

On page 4 of the Appeal Brief under the Anticipation heading, the appellant provides a definition of character graphics as defined in the specification. Next, the appellant argues that Timmons does not disclose character graphics as defined by the instant specification. The examiner disagrees and refers to page 11, [0035] of the instant specification where it is stated, "Suitable character graphics can include...inanimate objects..." The character graphics of Timmons are in the form of blocks, which are inanimate objects and therefore fall under the appellant's definition of

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a suitable character graphic. Likewise, Timmons discloses in col. 3, lines 44 – 46 that the blocks are printed in scattered array, which would constitute an unregistered graphic, as according to page 4 of the Appeal Brief is a graphic whose placement on the article is not controlled. As taught in col. 3, lines 49 – 52, the alphabet letters on the blocks are printed with the water-dispersible or water-soluble coloring agent, which in turn, allows the alphabet letters within the blocks to be considered as a wetness indicator graphic.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




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